CONSUMER AND COMPETITION POLICY

CONSULTATION ON THE REMOVAL OF BARRIERS TO THE SHARING OF NON-CONSENSUAL CREDIT DATA

11 OCTOBER 2006

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Consultation on the removal of barriers to the sharing of non-consensual credit data

The Government is keen to promote responsible lending in the credit market as part of its strategy to minimise over-indebtedness. One aspect of responsible lending concerns the making of lending decisions. Lenders are encouraged, wherever practicable, to consider the full extent of a consumer's credit commitments when deciding whether or not to lend to that individual. This is usually achieved through the sharing of credit data via Credit Reference Agencies. The consumer gives their permission to the lender to share their data via a "fair processing" notice contained within the credit agreement. However accounts opened before the late 1990s typically did not contain such fair processing notices. In practice this means that lenders are unable to share data, other than instances of default, on about 40 million accounts (of which about 33 milllion are estimated to be current accounts). This is compared with around 350 million accounts on which data is currently shared. The Government takes people's rights to privacy very seriously and wants to strike the right balance between individual rights and the wider public interest. This consultation therefore seeks views on the extent to which this non-consensual credit data could be shared by lenders, subject to appropriate safeguards, in order to enable lenders to make better, more responsible, lending decisions.

Issued	11 October 2006
Respond by	11 January 2007
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Foreword from the Minister of State for Trade, Investment and Foreign Affairs

The Government wants to see a fair and competitive consumer credit market, where consumers have the confidence to make the right borrowing decisions, and lenders lend responsibly. At the same time, the Government is working with lenders and those in the debt advice sector, to minimise the number of consumers suffering from over-indebtedness.

As part of our over-indebtedness strategy we want lenders, where appropriate, to share relevant data about the amount of credit that is available to an individual consumer and their credit use, and to use this information to make responsible lending decisions.

I recognise the current good work of the credit industry in sharing more data, and in developing new ways to predict and respond to over-indebtedness, through data sharing. This can only help lenders and borrowers alike, to minimise levels of bad debt.

Where the Government is able to assist this process of data sharing, we are keen to do so. However this has to be balanced against individual rights to privacy and concerns about what happens to an individual's personal financial information.

This consultation aims to find the right balance between the privacy and rights of the individuals, and reducing over-indebtedness within society.

I look forward to hearing your views on the proposals outlined in this consultation, to inform our decisions on how to handle the question of the sharing of data on credit accounts where consumers have not given their permission.

Ian McCartney

Executive Summary

The UK credit industry is the largest and most diverse in Europe. For most, credit provides a useful tool with which to deal effectively with the uncertainty and irregularity of modern life. However, a small and growing minority of individuals experience difficulty with their credit commitments (over-indebtedness). And a number of large UK banks have recently declared an increase in their provisions for bad debt in 2005.

In the light of these factors, the Government is keen to promote responsible lending within the credit market. A key element of responsible lending is not lending or extending further credit to a consumer who is over-indebted or who is at risk of becoming over-indebted.

Lenders use data available to them to assess a consumer's suitability for borrowing. In order to improve their lending decisions, lenders therefore share data concerning an individual's credit performance and commitments across the industry.

Lenders currently share data on approximately 350 million credit accounts via Credit Reference Agencies. The shared data can assist in identifying whether a consumer is over-indebted. However due to banking confidentiality and data protection legislation, lenders are not able to share data, other than instances of default, on accounts that were opened before lenders routinely asked for consumer's consent to share the data. These accounts are typically referred to as "non-consensual" accounts, and make up approximately 40 million further credit accounts.

The Government is considering to what extent the legal barrier to the sharing of credit data held on "non-consensual" accounts could be adjusted to enable the sharing of this data, where it is proportionate, and subject to the appropriate safeguards. This would help lenders to identify the full spread of a consumer's credit commitments when making responsible lending decisions. Achieving this policy aim would require providing an express legal basis for the sharing of certain data on these accounts, without the account holder's consent, for responsible lending purposes.

The Government takes people's rights to privacy and the protection of their personal information very seriously. The current legal framework provides a strong level of protection for the individual in the use of their personal information. In considering this proposal the Government is keen to ensure that the right balance is struck between individual rights and the wider public interest.

How to respond

This consultation opened on 11 October 2006. The last date for responses is 11 January 2007.

When responding please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were assembled.

A response can be submitted by letter, fax or email to:

Consumer Credit and Over-indebtedness Team
Department of Trade and Industry
1 Victoria Street, London SW1H 0ET

Tel: 020 7215 6290
Fax: 020 7215 0357
Email: credit.review@dti.gsi.gov.uk

A list of those organisations and individuals consulted is in Annex E. We would welcome suggestions of others who may wish to be involved in this consultation process.

Additional copies

You may make copies of this document without seeking permission.

An electronic version can be found at http://www.dti.gov.uk/consultations

Other versions of the document in Braille, other languages or audio-cassette are available on request.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the policy issues raised in the document can be addressed to:

Consumer Credit and Over-indebtedness Team
Department of Trade and Industry
1 Victoria Street, London SW1H 0ET

Tel: 020 7215 6290
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If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

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Consultation questions

1. Is seeking consent individually from holders of non-consensual credit accounts a practical solution to gain consumers consent to share data on non-consensual credit accounts? If not, or if you think there is an alternative approach, please give details.

2. Can lenders reliably and satisfactorily assess the extent of a consumer's ability to repay borrowing by demanding documentary evidence from the consumer? Please give reasons for your answer.

3. In what cases do you consider that the sharing of non-consensual data would be proportionate? Please give evidence to support your position and of how practical it would be (in your view) to produce a workable definition of the different types of consumer.

4. Do you consider that legislation to permit the sharing of non-consensual data would breach the Article 8 ECHR rights (right to privacy) of consumers? Do you consider that any breach would apply to all consumers, only to consumers who were not at risk of being over-indebted, or only to non credit active consumers?

5. What restrictions do you consider should be placed upon the lenders when sharing non-consensual data? Please give evidence where possible about the costs and benefits of such restrictions.

6. What restrictions do you consider should be made concerning the types of data that could be shared?

7. Do you agree that if the sharing of data on non-consensual credit accounts was to occur, consumers should be given the opportunity to object to their data being shared? What form should this opt-out take?

8. What other barriers are you aware of that may prevent the sharing of data that could help identify whether a consumer is over-indebted?

9. Are the principles of reciprocity a significant deterrent against the use of shared credit data to identify individuals for marketing purposes? Does SCOR provide a suitable forum for the governance of consumer credit data? If not, what additional safeguards do you think are needed?

The proposals

Consumer over-indebtedness: the problem

1. The UK credit industry is the largest within the EU, relatively competitive, and very diverse in the credit products available to consumers. For most, credit has provided a useful tool with which to deal effectively with the uncertainty and irregularity of modern life. However, a small and growing minority of individuals are experiencing difficulty with their credit commitments[1].

2. Where it occurs, over-indebtedness has negative impacts not only economically but also socially on the individual concerned (for example, an increase in stress levels). The Government is therefore keen to promote responsible lending within the credit market. A key element of responsible lending is not lending or extending credit to a consumer who is over-indebted or who is at risk of becoming over-indebted. The Government also considers ongoing account management and the sympathetic management of accounts in arrears as a facet of responsible lending.

3. The use of data sharing to promote responsible lending was highlighted in the Government's strategy for tackling over-indebtedness[2]. The issue was also raised in some detail by the Treasury Select Committee enquiry into credit card charges and marketing[3] and during the passage of the Consumer Credit Act (2006) through parliament.

4. In the UK, lenders share data about an individual's use of credit in order to assist them in deciding whether or not to lend to that individual. The data can be used to identify whether or not an individual is a good credit risk, whether their risk profile is appropriate for the product on offer, and whether an individual is potentially over-indebted. The data can also be used for ongoing account management purposes such as managing credit limit increases on revolving credit products such as credit cards.

5. Credit data is shared by lenders via credit reference agencies (CRAs). See Annex A for a description of data sharing processes.

6. The common law of confidence, of which banking confidentiality is a sub category, provides the legal basis for the sharing of financial data. The common law holds that a lender has an implied contractual duty to keep a consumer's affairs private, but that duty is qualified under what

[1] Over-indebtedness in Britain: a DTI report on the MORI Financial Services Survey 2004; and Tackling Over-indebtedness – Action Plan 2006
[2] Tackling Over-indebtedness – Action Plan 2004; Tackling Over-indebtedness – Action Plan 2005; Tackling Over-indebtedness – Action Plan 2006
[3] Treasury Select Committee Second report into Credit Card Charges and Marketing, February 2005

are known as the Tournier principles[4]. The four qualifications (or exceptions) are:

- where disclosure is under compulsion by law;
- where it is in the public interest to disclose;
- where the interests of the bank require disclosure;
- where the disclosure is made with the express or implied consent of the consumer.

7. Data that is currently shared by lenders falls under the fourth exception. Since the late 1990s, most lenders have routinely included "fair processing notices" in their credit agreements. These notices inform the consumer that their signature on the credit agreement will give their consent to their data being shared via a CRA. In effect, lenders have made it a condition that consumers agree to data sharing. If a consumer refused, they would not be offered the credit product.

8. Accounts that were opened before "fair processing notices" were routinely included in credit agreements are known as non-consensual accounts (or sometimes as "historic" accounts because they are "historic" agreements). Lenders cannot share data relating to these accounts, with the exception of data on accounts in default (3 months or more in arrears) where the contract is seen to have broken down. In these cases lenders can share data relating to the account in default subject to a number of provisions[5].

9. It is estimated that data on approximately 40 million non-consensual accounts is not shared, compared to approximately 350 million accounts on which data is currently shared. This is a particular issue for credit cards, store cards and current accounts, which can remain open for decades.

10. The Government's policy objective is that where appropriate, lenders share relevant credit data to promote responsible lending. This includes using all the credit data that is legally available to them, to help identify the full spread of a consumer's credit commitments when making lending decisions, and in ongoing account and arrears management.

[4] Tournier v National Provincial and Union Bank of England [1924] 1 KB 461, CA

[5] The conditions under which lenders can share data on non-consensual accounts which are in default are:

- the consumer must be clearly advised that the account is not being operated in accordance with the agreements and given time to rectify the situation before action is taken (typically 28 days);
- the individual must also be advised that if the situation is not rectified, details of the account will be passed on to a credit reference agency, and shared with others;
- prior to this, all consumers whose data is not currently shared should be advised that sharing of information will occur where accounts are in default, and the procedure that will be followed should this occur.

11. Lenders themselves have made substantial progress towards that goal. At present it is believed that there is coverage of up to 58% of consumer credit agreements on CRA databases (approximately 350 million accounts, not all of which are currently active).[6]

- A large tranche of data was added in 2002 when mail order companies agreed to wider data sharing across all CRAs, adding approximately 35 million accounts to the databases.

- By September 2005, all credit card lenders were sharing all credit card data, where legally able to do so, resulting in at least 6 million additional credit accounts shared (another 11% of the credit card market) and bringing the percentage of credit card accounts on which full data is shared to 84%. This should further increase the ability of lenders to determine the risk for any given individual, and further improve lending decisions.

- The retail banks have also fulfilled their commitment to share data on all loans by the end of 2005, subject to logistics and feasibility. They have also worked to shape a non-mandatory agreement for the sharing of current account positive data, recognising the unique nature of the current account relationship including overdraft balances.

- The use of data sharing by the credit industry as a whole is also growing and this can be seen in the growth in the number of members on the CRA databases. CRAs report that lenders are currently signing at a rate of 30 to 40 new portfolios each year.

12. Given lenders' high reliance on CRA data, lenders have been examining how CRA data can be improved. It is the lenders' view that the significant next step in enabling them to see the full spread of a consumer's credit commitments, would be the addition of non-consensual data to the CRA databases. However this brings into question the consumer's individual right to the privacy of their financial information. **This consultation document therefore seeks views on the extent to which it would be proportionate to allow for non-consensual credit data to be shared, subject to the appropriate safeguards.**

13. The current legal framework only allows for the sharing of credit data (other than default data) if the consumer first gives their consent. One way of gaining this consent in respect of non-consensual data would be to send a mailshot to consumers, asking them to give their permission for the data to be shared. However the industry argue that this is not an effective means of moving large numbers of such accounts into the shared database. Typical response rates to mailshots of interesting commercial offerings are in the low single digit percentiles, and it is

[6] From "Data sharing and the prevention of over-indebtedness" a paper presented to the DTI by FLA, BBA and APACS.

anticipated that the response rate for the question of sharing data on credit accounts would be even lower. Some lenders have been seeking to obtain consent when communicating with their customers on other matters, and where this has been successful are therefore able to use this data, but again this is not a viable method on the scale required.

Question 1: Is seeking consent individually from holders of non-consensual credit accounts a practical solution to gain consumers consent to share data on non-consensual credit accounts? If not, or if you think there is an alternative approach, please give details.

14. An alternative way to strengthen lending decisions would be for lenders to demand documentary evidence of income (as they do with mortgages) and of other credit commitments when a consumer is applying for credit. This would be a less intrusive way of gauging a consumer's ability to repay because it would not result in the sharing of data relating to credit accounts where consumers have not given their consent. However, while appropriate for large commitments such as mortgages, for consumer credit this has proved an inconvenient method for assessing the extent of a consumer's ability to repay, and is not cost-effective for smaller amounts of credit. Furthermore, consumers that represent the greatest risk have the greatest incentive to withhold information that could be considered negative and double-checking information (e.g. by contacting employers) adds costs to the process. It also would only be relevant when consumers apply for new credit and would not help to forestall problems with credit commitments on existing accounts (ongoing account management).

Question 2: Can lenders reliably and satisfactorily assess the extent of a consumer's ability to repay borrowing by demanding documentary evidence from the consumer? Please give reasons for your answer.

15. The alternative would be for the Government to provide an express legal basis to enable banks to share appropriate and relevant data on non-consensual credit accounts, for responsible lending purposes, without gaining the consumer's specific permission. **In considering this proposal, the Government is keen to ensure that the right balance is struck between individual rights and the wider public interest.** Any data sharing provision would need to be proportionate to satisfy the requirements of Article 8 of the European Convention on Human Rights (right to privacy) and the Data Protection Directive.

Costs and benefits to the data subject (consumer)

Consumers who are over-indebted or at risk of becoming over-indebted

16. The main benefit of the proposal would be to help lenders to identify consumers who are, or who are at risk of becoming, over-indebted. This meets one of the Government's own aims for data sharing (for public services delivery) - to protect vulnerable individuals and groups through the early identification of problems[7]. However, it is difficult to measure the exact benefits of adding this data to the shared (CRA) databases in terms of identifying those at risk of over-indebtedness, because of banking confidentiality restrictions.

17. Some evidence was gained at the request of a major lender, when a credit reference agency (Experian) was able to analyse the non-shared portion of the lending book of that lender to establish the likely impact were these accounts to become available on the shared database. The data used was the full credit record of the non-consenting segment of the credit card portfolio of a lender i.e. the data on every open card issued from the beginning of the lender's credit card issuance to when they changed their Fair Processing Notices. This is exactly the data that would be shared should the Government remove the barriers to data sharing on non-consensual accounts. The results were that for each 1 million extra accounts, some 2,000 more consumers would be deemed to be over-indebted using Experian's own Consumer Indebtedness Index (a method of calculating over-indebtedness using the information held on Experian's closed user group database). These are not consumers who are in arrears, but are consumers who display characteristics that show that they are likely to experience arrears or other problems relating to excessive borrowing in the near future. From this, it could be estimated that sharing the data on the estimated 40 million non-consensual accounts would identify approximately 80,000 additional consumers as being over-indebted or at risk of becoming over-indebted. This is approximately 0.2% of the adult population, compared with 4% of the adult population who have been in arrears on at least one consumer credit commitment or domestic bill for more than 3 months.[8]

18. A number of lenders currently use the Experian Consumer Indebtedness Index, meaning that the sharing of this data would have an immediate effect in the identification of many of these over-indebted individuals. Many other lenders use their own measures for identifying the over-indebted. The benefit from sharing would not be limited to the estimated 80,000 consumers, this information would also improve the ability of lenders to identify consumers who are on the cusp of over-indebtedness.

[7] See the Government's strategy for Transformational Government. Work on data sharing for public service delivery is overseen by a Ministerial Committee on Data Sharing.
[8] Op. cit. 1

19. The additional data would help lenders identify potential borrowers who were over-indebted or potentially over-indebted when applying for new credit. It would also be beneficial for ongoing account management purposes. When a consumer starts to experience problem debt, the first indication of this problem is when non-priority debts fail to be paid (debts such as credit cards or overdrafts[9]). Lenders receive regular information from the CRAs concerning the status of their customers for account management purposes. The earlier a problem is identified, the earlier all lenders can intervene to prevent problem debts building up. In the context of account maintenance the addition of non-consensual data to the CRA databases may therefore have a greater impact on minimising over-indebtedness, than simply for identifying whether a consumer should or should not be granted additional credit following an application.

20. Industry could assist these consumers by changing the nature of their credit to better suit their circumstances, declining additional credit, managing credit limits down as repayments are made, and referring them to additional help (for example, at the Consumer Credit Counselling Service or the National Debtline) for further support.

21. The data would also be helpful for validating the information that consumers give to them on a credit application. One major lender reports that for 5% of applications for loans to their high street banks, there were undisclosed links to debts at previous addresses. This type of information can only be verified through the CRAs. Identifying consumers who may mislead the lenders over the extent of their debt (either deliberately of otherwise) may therefore help to pick up some other over-indebted consumers.

<u>Consumers who are credit active but who are not over-indebted</u>

22. Approximately 4% of the adult population are in systematic arrears on one or more credit commitment. Consequently the majority of consumers holding non-consensual accounts are not over-indebted nor at risk of becoming over-indebted. These consumers, however, may also benefit from having their data shared. The sharing of non-consensual credit data creates a level playing field where all data and all consumers are treated equally in terms of the lender's view of the consumer. Lenders increasingly look for credit activity in modelling credit risk. The "thicker" (i.e. the more information) held on an individual's file the more able the lender is to identify a consumer as a good credit risk. The APR (cost) of a credit product is designed around the risk profile of consumers that the lender is prepared to accept for that product. The lower the risk profile, the lower the APR. Consumers with better credit records (lower risk consumers) therefore benefit from access to lower priced products and a wider range of products overall.

[9] Priority debts are debts which if not paid could result in the loss or disconnection of a service (e.g. utility bills, rents or mortgages) or in criminal action (e.g. council tax)

The credit active consumers amongst those holding non-consensual accounts may therefore benefit from better prices and more choice in credit products. The converse to that is that those with a poor credit history may find themselves excluded from mainstream credit and consequently facing higher-cost credit options.

23. Improved risk assessment by lenders also means lower default levels. While it is difficult to quantify the benefit that may come from the increase in data, one lender has stated that their credit card models experience a 5% increase in efficiency for every 20% increase in predictive data[10]. The additional 40 million accounts (assuming not all current accounts are overdrawn to the extent required for data sharing) would therefore equate to roughly a 2.5% increase in efficiency of the credit scoring model. While the change will be different for each approval model, every model will be measurably improved given the sheer number of records in question. The cost of default may be borne by all consumers. Lower default levels may therefore benefit consumers through lower prices overall.

24. However, it is difficult to quantify the benefit of this improved fiscal modelling. Consequently it is particularly difficult to demonstrate proportionality for consumers who are not over-indebted.

<u>Non credit active consumers</u>

25. Not all consumers are equally active in the credit market. 33 million of the non-consensual accounts are current accounts. Because of banking confidentiality restrictions, it is not possible to determine how many of these current accounts are held by consumers who are not at all active in the credit market compared with those who also hold a credit product such as a credit card or personal loan. But approximately 25% of households in the UK have no credit facilities, and 53% of households have no current credit commitments[11]. But for those consumers who are not credit active but who hold current accounts opened without a fair processing notice, there may be little or no benefit from the sharing of non-consensual data. For non credit active consumers in particular, allowing the sharing of non-consensual data could be seen to breach their right to privacy.

<u>Potential costs to consumers</u>

26. Many consumers are concerned about their right to privacy, particularly relating to personal financial information. A MORI survey conducted for the Department of Constitutional Affairs into public awareness and perceptions of privacy and data sharing[12] showed that financial information was the most common type of information that people

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[10] Op. cit. 6

[11] Household Survey on Over-indebtedness, Elaine Kempson, Personal Finance Research Centre, 2002

[12] Privacy and Data-Sharing: Survey of Public Awareness and Perceptions, June 2003

regarded as “personal information”, with 21% of respondents citing it. The survey highlighted public concerns around privacy and data sharing with the majority of the public (60%) saying they are very or fairly concerned about how their information is handled, with 22% being very concerned. Only 12% are not concerned at all. The Performance and Innovation Unit report into privacy and data sharing[13] reported that the level of public concern about privacy is on the rise, with an increasing proportion of people saying that they regard the right to personal privacy as very important.

27. Consumers may be concerned in particular about details of their current accounts being shared by lenders. Beyond these general privacy and confidentiality concerns there are also specific concerns both within the industry and outside about the potential misuse of credit data – such as the increased likelihood of inadvertent disclosure, identity theft and security. Although the industry self-regulates with regards to the use of credit data for marketing purposes, this also remains a source of concern for many consumers.

28. Research commissioned by the Information Commissioner’s Office (ICO)[14] shows that 78% of consumers surveyed were concerned or very concerned about financial loss as a result of mishandled personal data and 58% agree or strongly agree that they have lost control over the way their information is collected and processed. Only 46% of consumers are confident in the handling of personal data by finance and credit organisations and only 24% have confidence in CRAs’ handling of information. Indeed, about a quarter of the requests for assessment under s42 of the Data Protection Act received by the ICO are complaints about financial institutions and CRAs.[15] The CRAs, however, do work closely with the ICO to ensure compliance with the Data Protection Act.

Question 3: In what cases do you consider that the sharing of non-consensual data would be proportionate? Please give evidence to support your position and of how practical it would be (in your view) to produce a workable definition of the different types of consumer.

Question 4: Do you consider that legislation to permit the sharing of non-consensual data would breach the Article 8 ECHR rights (right to privacy) of consumers? Do you consider that any breach would apply

[13] Privacy and Data Sharing: The Way Forward for Public Services, April 2002
[14] http://www.ico.gov.uk/documentUploads/Final_report_individuals_6_10_05.pdf
[15] In the first 6 months of 2006, the ICO received 2195 requests for assessment under s42 of the DPA98. Of these, 563 (just over 25%) were dealt with by the team responsible for finance and credit issues –the majority of these will have been complaints about financial institutions and CRAs. Of the 675 requests in which the assessment made was ‘compliance unlikely’ or where the case had been referred for investigation, enforcement or prosecution, 190 (just over 28%) of these were dealt with by the finance and credit team.

to all consumers, only to consumers who were not at risk of being over-indebted, or only to non credit active consumers?

Proportionality – restricting the use of the data

29. The main way to increase the proportionality of any measure to enable lenders to share non-consensual data is to restrict when lenders are able to share this data. As well as considering *what* data can be shared, the government is therefore also seeking views on *when* the non-consensual data could be shared. For example, lenders could be restricted to sharing this data only in cases of suspected over-indebtedness, (e.g. when another account is 3 months or more in arrears). This would have the effect of restricting the sharing of non-consensual data to those who are already over-indebted, or at risk of becoming over-indebted. Another possibility would be to restrict the sharing of this data to when the consumer makes a request for new credit (in effect, consumers giving their consent at this point). This would have the effect of restricting the sharing of non-consensual data to the credit active population only.

30. The Government recognises that such restrictions could place additional administrative costs on lenders. However such restrictions may be necessary to justify the sharing of any non-consensual data.

Question 5: What restrictions do you consider should be placed upon the lenders when sharing non-consensual data? Please give evidence where possible about the costs and benefits of such restrictions.

31. An additional way to make the proposal more proportionate to the benefits gained would be to restrict the data that could be shared. If a suitable case is made for the sharing of data on some, or all, non-consensual accounts, we would therefore propose restricting the data shared to that data currently shared by lenders. That is:

- Unique Record Identifier – for matching purposes. This identifier is not disclosed on the data file.
- Account Type - shows as Current Account, Credit Card, Loan, etc.
- Start Date - the date on which the account was first opened
- Closed/Settled/End Date - the date on which the account was closed (if applicable)
- Name and Address - title, forename, middle name, surname, full address and postal code
- Date of Birth
- Balance- the balance of the debt on the date all accounts are reported. For current accounts the account is currently reported when an overdraft is past due or when the funds borrowed exceeds £1250
- Credit Balance Indicator - this field indicates if an account is in credit and is typically blank. When populated it generally only occurs for

revolving credit products such as credit cards. This field is not currently populated for current accounts with a credit balance (as opposed to those in overdraft) as these accounts are not shared at all. However, this field may be populated in the future if lenders decide to share current account balance data as a way of measuring the consumer's ability to repay
- Credit limit for revolving products. While mandatory for credit cards, this is an optional field for current accounts
- Account Status Code - graduated scale from status 0 through to status 8 reflecting past due status or perceived level of risk from the account
- Account Flag - to show special status such as cardholder deceased, cardholder using a debt management programme, partial settlement, etc.
- Default Date - where applicable
- Default Balance - where applicable

32. We recognise that these fields are not necessarily static and that stipulating exactly which fields may be shared prevents lenders from amending what is shared on these accounts in the future. For example, lenders would be prohibited from sharing data such as cash advance or minimum repayment data on these accounts, as some lenders are beginning to do. However, the extent of the impact of this type of data on responsible lending decisions has yet to be quantified. It is the Government's view that even if the case were made for sharing non-consensual data on the same basis as consented data is currently shared, without any evidence on the impact of the sharing of additional data fields, allowing the sharing of any further data without consent would not be proportionate.

33. An alternative would be to include a regulation-making power to specify what fields could be shared. This would allow for more flexibility, but would require a level of consultation and parliamentary scrutiny (affirmative resolution) to ensure that data sharing remained proportionate.

34. The sharing of current account data may be of particular concern for some consumers. The industry estimates that of the 40 million non-consensual accounts, 33 million are current accounts, the remaining 7 million being other credit accounts such as credit cards or long-term loans. However the industry is not able to identify how many of these current accounts are held by consumers who have no credit commitments at all (non credit active consumers). Restricting the proposal to exclude current accounts or to allow current accounts only where they meet specific criteria relating to the use of the overdraft facility, may be one way to alleviate these concerns.

Question 6: What restrictions do you consider should be made concerning the types of data that could be shared?

35. Similarly, if any non-consensual data were to be shared, we would propose that lenders be required to give their consumers 28 days notice of the intention to share the data on their non-consensual accounts and the option to object to that sharing. Lenders would not be entitled to share data on non-consensual accounts held by those who objected but would continue to take decisions about those consumers on the basis of data on any other accounts held. Under the Data Protection Act, lenders would also have to inform consumers how their data would be used. We recognise the cost implications on lenders in such an exercise, but suggest that this could be minimised if lenders were to include a suitable notice as part of their routine correspondence with the consumer.

Question 7: Do you agree that if the sharing of data on non-consensual credit accounts was to occur, consumers should be given the opportunity to object to their data being shared? What form should this opt-out take?

Other issues

36. The Government is aware that over-indebtedness is not uniquely related to consumer credit. In December 2004, 1.2 million electricity and 1 million domestic gas customers were repaying debts to their supplier[16]. Although the majority of debts were small, less than £100, recent gas and electricity price rises are likely to increase the number of vulnerable households in fuel poverty[17] and experiencing debt or disconnection. Discussions are ongoing between the CRAs and the utility regulators to investigate the addition of utility debts to the CRA databases. However, as with data on non-consensual credit accounts, there may be regulatory barriers to the sharing of this data.

37. There have been some calls from the credit industry for the sharing of data on student loans. Student loans fall into two categories. Student loans awarded before 1998 were consumer credit agreements, and use a fixed instalment repayment mechanism for the repayment of the debt. It has not been policy to share default data on pre-1998 loans although the Government continues to keep this policy under review. The majority of student loans (taken out since 1998), however, operate on an income contingent basis. They are collected through the tax system and are only repayable once a target income has been reached: the interest rate is also subsidised and these student loans are therefore exempt from the provisions of the Consumer Credit Act (1974) under the low cost exemption.

38. There have also been calls from the credit industry for the sharing of data on council tax arrears. There are restrictions on the use of council tax data under the Local Government Finance Act 1992. However

[16] Tackling Over-indebtedness – Annual Report 2005
[17] Households that spend more than 10% of their income on heating are defined as fuel poor.

Liability Orders are in the public domain and could therefore already be used by the CRAs and lenders. Liability Orders are granted by a court following a final reminder (usually where a payment is 6 weeks late – but this varies from council to council), and a summons. The court's involvement means that any arrears that are due to, for example, an administrative error, can be discounted and avoids the problem of arrears being recorded on a credit record unintentionally. Approximately 3 million people have received summons and 2 million Liability Orders have been granted.

Question 8: What other barriers are you aware of that may prevent the sharing of data that could help identify whether a consumer is over-indebted?

Safeguards

39. There are some concerns both within the industry and outside about the potential misuse of credit account data (for example, confidentiality, increased likelihood of inadvertent disclosure, identity theft and security). These concerns may be particularly relevant if the Government were to enable the sharing of data to which consumers had not given their consent. In particular reference is made to the position in the United States where data sharing led to a significant increase in predatory marketing. However data protection laws in the UK are different to those in the US.

40. The current legal framework in the UK provides a strong level of protection for the individual in the use of their personal information. Data protection laws aim to guarantee rights to consumers when their data is shared and also demand good data management practices on the part of those who process the data (data controllers).

41. Under the Data Protection Act (1998), organisations processing personal data (data controllers) must comply with eight data protection principles. These require that data is:

- fairly and lawfully processed;
- processed for limited purposes;
- adequate, relevant and not excessive;
- accurate;
- not kept longer than necessary;
- processed in accordance with individuals' rights;
- kept secure;
- not transferred to non-EEA (European Economic Area) countries without adequate protection.

42. The Data Protection Act is enforced by the Information Commissioner (ICO). Breaches of the Data Protection Act (1998) are brought to light via complaints (requests for assessment) to the ICO by individuals, enquiries which lead to compliance investigations, in the course of regular contact and consultation with the CRAs and lenders, or through

the use of the ICO's audit powers – though an audit can only take place with the consent of the data controller.

43. The provision of consumer credit and certain activities of credit intermediaries are also regulated under the Consumer Credit Act (1974). This Act requires, among other things, that all traders who provide credit under regulated agreements obtain licences from the Office of Fair Trading (OFT - one of the enforcement authorities under the Consumer Credit Act). The operation of a CRA, as defined in the Consumer Credit Act (1974), is also licensable under that Act and credit brokers, debt advisors and other intermediaries may also require licences.

44. Under the Consumer Credit Act (1974), the licensing regime requires that the OFT conduct a fitness test into the suitability of an applicant for a consumer credit licence. This test includes a consideration of any relevant circumstances, such as whether the applicant has committed any offences, evidence of failure to comply with the provisions of the Act, and any evidence that the applicant has engaged in any unfair or improper business practices (as defined under the Consumer Credit Act (1974)). Serious, persistent and deliberate breaches of the data protection principles could therefore be taken into consideration when assessing an applicant's fitness to hold a consumer credit licence.

45. The Consumer Credit Act (2006) will make some changes to this licensing regime. It will strengthen the fitness test, enabling the OFT to look forward, to an applicant's suitability to conduct a credit business as well as backward, to past conduct. It will also give the OFT a power to impose a requirement on a licensee where there is a specific concern relating to the conduct of licensees.

46. Data access requests by individual consumers are governed by the Data Protection Act, which provides for the right of consumers to find out what information is held about them on computer and on certain paper records. A consumer who believes wrong information has been filed by a CRA may require it to be corrected or removed. Other consumer rights are: the right to prevent processing for direct marketing, the right to prevent automatic decision taking in certain circumstances, the right to prevent processing likely to cause damage or distress (although in practice this rarely applies to CRA activities because where information is provided to the data controller under contract or in preparation of contract, the data controller does not have to stop the processing) and an entitlement to compensation where contravention of the Data Protection Act by the data controller has led to damage or distress.

47. Disputes about debts that cannot be resolved between the lender and the consumer can also be referred to the financial ombudsman for independent resolution.

48. The sharing of personal data by the closed user groups[18] at the CRAs is also self-regulated by the industry's own "Principles of Reciprocity". These consist of one governing principle followed by six supporting ones. The Principles set out the rules for the recording, supply and access of credit performance data shared through the CRAs. The governing principle is that data should only be shared for the prevention of over-commitment, bad debt, fraud and money laundering, and to support debt recovery and debtor tracing, with the aim of promoting responsible lending. (The principles are in Annex B).

49. The principles are policed by the CRAs – and the sanction for breaching the principles is exclusion from the closed user group. That is, a lender who breaches these principles would not be able to use CRA data held on the closed user group database (though they would still be able to access the public data). This would be a significant sanction for lenders who would have no way of assessing the risk to themselves from bad debt. To date no lenders have been excluded from a closed user group on the basis of a serious or consistent breach to the principles of reciprocity, although some lenders have been prevented from joining due to a failure to meet conditions for the supply of data.

50. There are also conditions in the CRAs' contracts with their users that prohibit the misuse of data and require adherence to the Principles of Reciprocity. Furthermore, CRAs will not supply or process data outside the Principles and all CRA products are developed in accordance with the Principles. It should therefore not be possible to select a group of consumers on the basis of certain characteristics (e.g. consumers who have recently reached their credit limit on their main credit card, or who have their current account with Bank A) for marketing purposes. Rather, a lender has to request information by the name of the consumer, which would mean a manual search would have to be conducted to select users with specific characteristics.

51. The credit industry has established the Steering Committee on Reciprocity (SCOR) to develop and oversee the Principles of Reciprocity. This includes addressing issues around the use and sharing of credit performance and related data on individuals. The specific functions of SCOR are:

- To formulate, draft and oversee the implementation of the Principles; inform Data Sharers of the purpose and scope of the Principles and provide advice and guidance; wherever required, amend the Principles; and recommend compliance with the principles.
- To be the forum where all the representatives of the Trade Associations and the CRAs shall meet to manage data sharing and data quality issues.

[18] Closed user groups refer to the lenders who can access the non-public data from the CRA databases. This data is only available to those who contribute this kind of information to the database. Only lenders who add credit account data into the database can retrieve credit account data from it.

52. SCOR consists of representatives from the three CRAs as well as industry trade associations – the British Bankers Association, the Finance and Leasing Association, the Council for Mortgage Lenders, the Mail Order Trade Association and the Consumer Credit Trade Association.

53. The current safeguards for the sharing of credit data are therefore:

- Restrictions on the use of the data for pro-active (predatory) marketing through the Principles of Reciprocity and codified in lenders' contracts with the CRAs
- Requirements on good data management practices under the Data Protection Act (1998) and enforced by the Information Commissioner
- The resolution of disputes between lenders and consumers via the financial ombudsman

54. The Government is interested in views as to whether the current system of regulation and self-regulation would be sufficient if non-consented data were to be shared. There are alternative routes to deterring predatory marketing. For example, the purpose of the data sharing could be restricted under the amending legislation, or the industry could be encouraged to codify best practice through their existing codes of practice (e.g. the Banking Code, the FLA Lending Code).

Question 9: Are the principles of reciprocity a significant deterrent against the use of shared credit data to identify individuals for marketing purposes? Does SCOR provide a suitable forum for the governance of consumer credit data? If not, what additional safeguards do you think are needed?

5. What happens next?

The closing date for this consultation is 11 January 2007. We will publish a summary of responses received and a Government response within 3 months of this date.

ANNEX A - The use of financial data by lenders

55. Lenders can only make decisions on whether or not to lend to a consumer based on the information available to them at the time. That information comes from three or sometimes four main sources:

- The consumer themselves on the application form.
- The lender's own records and experience, if the consumer has had a previous relationship with them.
- Information concerning the consumer's credit commitments with other lenders, shared via a credit reference agency (CRA) and obtained as a result of a search.
- Lenders can also access information from other lenders with the consent of the consumer (for example, as in mortgage applications)

56. The data shared by the credit industry is used to calculate credit scores. Credit scoring is a technique that measures the statistical probability that credit will be satisfactorily repaid. It is based on the fact that it is possible, using statistical techniques, to predict the future performance of applicants with similar characteristics to previous applications. Scoring calculates the level of risk and reduces the element of subjectivity in lending decisions. It enables lenders to manage their businesses more effectively to the benefit of the majority of consumers who wish to borrow only what they can afford to repay. Credit scoring also plays a useful role in the responsible granting of credit.

57. Credit scoring is considered to be one of the most consistent, accurate and fair forms of credit assessment available[19]. However, for practical and economic reasons, it is not possible for all lenders to adopt credit scoring systems. Equally, credit scoring is not the only technique, and may be combined with other methods or not used at all.

58. Lenders use credit scores in three ways:

- To identify whether an applicant for credit is a suitable risk for their credit product. This is done through the modelling of the credit data and a matching of the resulting credit profile of the consumer with that for the credit product. It is this process that helps a lender decide whether or not to offer credit to a consumer.
- To identify those at risk of becoming over-indebted. This can be used to inform a credit decision, and some lenders now pro-actively screen their customers for over-indebtedness in order to offer advice and information to consumers before a difficulty arises.
- Some lenders use the information to offer risk based pricing to consumers. This means that consumers who are judged to be a lower credit risk may be offered a lower cost of credit than their higher risk

[19] OFT Guide to Credit Scoring

counterparts. Conversely, those at high risk, may be offered a higher cost of credit.

59. As well as credit scoring, some larger lenders also use the shared data for behavioural modelling, where data is analysed on current customers (as opposed to those applying for credit) for purposes such as increasing credit limits or the management of accounts in arrears. In behaviour modelling, lenders can use richer data considering the behaviour of a consumer over time to consider, for example, the volatility of transactions.

60. Data sharing is also used to detect fraud, tracing of debtors, general tracing and insurance assessment.

What data do lenders share, and how is it shared?

61. In the UK, consumer credit data is shared via three credit reference agencies (CRAs) - Callcredit, Equifax and Experian. These CRAs maintain databases that hold information concerning personal credit performance. Some of the information is publicly available information (for example from the electoral roll or information about bankruptcies and/or County Court Judgements (a court order concerning the repayment of a debt)), and some relates to specific credit accounts supplied directly to the agencies by credit providers.

62. The following types of information are currently shared between participating lenders via the CRAs:

- Consumer details: current and previous names, current and previous (last six years') addresses, date of birth and, when the consumer dies, a marker to indicate this fact.
- Financial links with other people, usually the spouse.
- Credit account details which may vary depending on the product but may include information such as; date agreement started, period of agreement, amount borrowed/credit limit, current balance (updated monthly), payment history showing whether the consumer pays on time each month, monthly repayment amounts (for long term credit only), date closed, date defaulted, current default balance and original default amount. In addition, Callcredit shows previous balances and previous credit limits.
- There are also various flags to indicate, for example, whether the account is dormant, whether there is an arrangement, a dispute or a query, whether the debt has been sold on to another company, or the consumer has moved house without supplying a forwarding address.
- The Council of Mortgage Lenders Possessions Register, which contains details of people who have had their properties repossessed. The aim of the register is to help detect borrowers who fraudulently do not disclose that their previous property was repossessed.

- Searches in respect of applications for credit are retained on file for up to two years and are shared with lenders, whether or not they are members of the closed user group (a search “footprint”).
- All other types of searches (e.g. Identification searches) also leave a “footprint” but they are currently only visible to the organisation that made the search, the CRA and the consumer themselves if they apply for a copy of their credit file.

63. Lenders may join at one of two levels – full, or default. “Default data” is a reduced level of information covering only those accounts that are in default (typically at least 3 months in arrears and where the lender considers that the relationship has broken down), whereas “full data” or “positive data” is information on all accounts (whether they are in arrears or not).

64. Lenders only share data on accounts on which the consumer was notified that sharing would occur, such notification normally takes place at the time account was opened. They do not currently share data relating to non-consensual credit accounts.

65. As agreed by the Information Commissioner, CRAs retain data on County Court Judgements and defaults for 6 years. Credit accounts are shared for the life of the account and for 6 years thereafter although actual monthly performance data on a routine credit search is supplied for up to the previous 4 years and search “footprints” (showing that a consumer applied for credit and that the CRA database was searched) for up to 2 years. The Electoral Register information is built up year on year and has been held since 1981.

66. All types of consumer credit are covered by the data sharing arrangements, including loans, credit cards, store cards, current accounts, hire purchase, mortgages, mail order accounts, and mobile telephone contracts. The main exceptions are data from small companies operating in sectors where it is difficult to extract consumer profiles on a regular basis in a format suitable for sharing with other lenders, for example, where collections are on a weekly basis. Small companies may also decide not to use CRAs on the basis of cost.

67. The CRAs share this data via closed user groups. That is, in order for a lender to see the information held by a CRA (other than public data), they have to contribute information to the CRA. This is done on a reciprocal basis i.e. lenders who only provide default data may only access default data, and those who contribute full data, may access full data.

Recent advances in data sharing

Behavioural Data

68. At the end of November 2005, Barclaycard, initially in partnership with The Co-operative Bank, Egg and Abbey, announced a new initiative on the sharing of behavioural data via the three CRAs. This was an issue raised by the Treasury Select Committee in their enquiry into credit card charges and marketing[20]. This behavioural data applies to credit card data only and will include information such as:

   - How much is being spent on the card each month
   - How much is being repaid each month
   - How much cash has been taken out
   - Any recent increases or changes to the credit limit
   - Any cheques sent for payment which bounce
   - How many people use the card

69. It should be noted that this does not involve the sharing of bank statements or detailed data on individual transactions – rather it is a summary of account activity covering the information in the bullets above.

70. The aim is to identify specific behaviours or behavioural patterns that may help to identify consumers at risk of taking on too much personal debt, and to improve lenders' ability to identify those who have experienced a change in circumstances, leading to repayment difficulties.

Income data

71. In March 2006, four lenders (RBS, HBOS, HSBC and Lloyds TSB) are piloting a scheme to determine the benefits of sharing income data with CallCredit (one of the CRAs). Depending on the information available to the lenders, this would be in the form of either turnover data on a current account, or income data as specified on an application form, together with a date to indicate how recent the information was. As is the case with behavioural data, because of the sensitive nature of this information, this is not shared in the form of raw data, but in the form of indices, ratios and movements. The aim is to enable the lenders who share this data to more fully assess the borrowing to earnings ratio of a consumer.

When is data shared?

72. The account data held by the CRAs is only shared (accessed) by lenders in limited circumstances and generally with the consent of the individual or as permitted by the Data Protection Act 1998:

[20] Op. Cit. 3.

- When a consumer applies for new credit. If the lender subscribes to a CRA, they will request appropriate information from the CRA to help them decide whether or not to offer credit.
- The lender may also request information on a consumer for account management purposes, for example, when deciding whether or not to raise a credit limit on a running account credit facility, or to help with debt collection activities such as debt collection or tracing for debt purposes.
- For limited marketing purposes (under self-regulatory restrictions). Lenders can pre-screen consumers' details to remove individuals who are no longer at an address or who are already in serious arrears from any marketing campaign. They cannot use the data for "predatory" or "target" marketing (i.e. to select consumers according to a particular set of characteristics for a targeted marketing campaign).
- To identify individuals who apply to open accounts in order to comply with the prevention of money laundering regulations
- To perform other fraud prevention or investigation checks.

What do Credit Reference Agencies do?

73. The CRAs' primary role is to maintain the shared databases for their customers (i.e. the lenders). However they also provide services to consumers, including:

- Advice on how to improve a credit rating (or credit score).
- Where credit accounts have fallen into default or arrears for specific situations such as a serious illness, a consumer can add a Notice of Correction to their account explaining the circumstances that led to their getting into financial difficulty and, if possible, to explain how their situation has now changed or improved. The inclusion of a Notice on a credit report means that any application for credit made by the consumer would be referred out of a lender's automated decisioning (scoring) system, and the content of the Notice should be taken into account alongside the rest of the information on the report and that on the application form. (A statutory requirement.)
- Notices of correction are also used to protect vulnerable individuals such as victims of fraud.
- Sending a consumer, on request, a copy of the information held on them on the database. An example of a credit report as seen by a consumer, is at Annex C. (It should be noted that this is different to the data received by lenders who do not see the names of lenders only the organisation type but who do see data on financial partners whereas the consumer will only see the name of the partner and that a financial link is recorded). (A statutory requirement.)

74. CRAs also offer a number of services to their business customers (i.e. to the lenders who use the database) including:

- Tailoring the type of data that lenders receive. CRA data is supplied to lenders in a variety of different formats to suit different lending methodologies. Smaller operators can use raw data which provides detail on each account in a similar way to that seen by a consumer in accessing their credit file. Larger volume lenders tend to take summarised formats capable of being read by electronic means and used in highly automated scoring systems. Lenders can apply their own scoring techniques to the data, or the CRAs offer their own bespoke or standard scoring programmes.

- CRAs can also offer time series data to lenders for use in their behaviour modelling which gives more detail of the behaviour of a consumer over time, as opposed to a one-off snapshot. For example, credit scoring may take into account a £3,000 balance that a consumer may have on a credit card with a limit of £5,000. Time series data can show whether this type of debt is a one-off, or a regular debt that is repaid in full each month, or a debt that has been mounting gradually over time.
- In addition, CRAs offer a variety of other scoring models such as those designed to predict over-indebtedness. These are techniques developed by the CRA for identifying those consumers who are, or are liable to become, over-indebted. As with the credit scoring, lenders can subscribe to this information.
- CRAs also offer a wide range of software solutions to access and mange the data both in terms of decision systems and also monitoring systems designed to ensure that the scoring and decision models operate as efficiently as possible and are adjusted with any variations in applicant population or economic changes.

79. It should be noted therefore that CRAs do not hold raw data on individual transactions and that raw data is not shared between lenders. Rather data is typically shared as summarised formats, ratios and indices.

ANNEX B - Glossary

Closed-user database: The database of shared credit information from lenders that is only accessible to those who contribute to it

Credit Reference Agencies (CRAs): A business that maintains a database of shared credit information for lenders

Credit scoring: A technique that measures the statistical probability that credit will be satisfactorily repaid.

Data controller: Organisations that process personal data

Data subject: The individual whose data is being held or processed

Default: A credit account that it at least 3 months in arrears

Fair processing notice: A notice on a credit agreement that states what information will be provided by the lender to the CRA and how it will be used - typically found near the consumer's signature

Full data: Shared data on accounts that are not in default (also known as positive data)

Historic data: Data on credit accounts that were opened without a fair processing notice (typically pre-1998) (also known as non-consensual data)

Negative data: Shared data on accounts in default

Non-consensual data: Data on credit accounts that were opened without a fair processing notice (typically pre-1998) (also known as non-consensual data)

Positive data: Shared data on accounts that are not in default (also known as full data)

Predatory marketing: Selecting consumers according to a particular set of characteristics for a targeted marketing campaign

Principles of reciprocity: Self-regulatory principle that set out the rules for the recording, supply and access of credit performance data shared through the CRAs

Revolving credit: A type of credit that does not have a fixed number of payments (such as a credit card or store card), in contrast to installment credit.

Search footprint: An indication on a credit file that shows that a consumer applied for credit and that the CRA database was searched

Steering Committee on Reciprocity (SCOR): Industry body that develops and oversees the principles of reciprocity

ANNEX C – PRINCIPLES OF RECIPROCITY

GOVERNING PRINCIPLE

1. Data are shared only for the prevention of over-commitment, bad debt, fraud and money laundering, and to support debt recovery and debtor tracing, with the aim of promoting responsible lending.

GENERAL PRINCIPLES OF CREDIT PERFORMANCE DATA SHARING

2. Data provided for sharing purposes must meet legal, regulatory and voluntary code of practice requirements before provision and in use. Subscribers must use data only for purposes for which the required form of consent has been given.

3. Data will be shared on the principle that subscribers receive the same credit performance level data that they contribute, and should contribute all such data available.

4. Data may be used or made available by the credit reference agencies only in ways permitted by these Principles.

USES OF SHARED DATA

5. Subscribers must never use shared data to target any customers of other specific subscribers.

6. Shared data must not be used to identify and select new prospects.

ADHERENCE TO THE PRINCIPLES

7. Subscribers have responsibility for regular monitoring to ensure compliance with the Principles, and the quality, completeness and accuracy of data supplied. Active steps must be taken to address any shortcomings.

ANNEX D – Example of a credit report

APPLICATION DETAILS

These are the details you gave us when you asked for your report. We have used this information to produce your report.

Name: Mrs FORENAME MIDDLE NAME SURNAME
Date of birth: DD/MM/CCYY
Other names you have been known by:
Mrs FORENAME MIDDLENAME OTHERSURNAME
Date of birth: DD/MM/CCYY

Address details:

Present: House name, House number, street, village/town, county, postcode

Other: other house number, other street, other village/town, other county, other postcode

Electoral roll information

This shows the dates that your name was registered on the electoral roll and the addresses you were recorded at. There is more information about the electoral roll in the explanatory leaflet.

Present Address

E1 Local authority ANYTOWN LA
HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE

House number
SURNAME FORENAME From 05/2002 to present

Other address/es

E2 Local authority ANYTOWN LA

OTHER HOUSE NUMBER, OTHER STREET, OTHERVILLAGE/TOWN, OTHERCOUNTY, OTHERPOSTCODE

SURNAME FORENAME — From 10/98 to 10/2001
OTHER SURNAME FORENAME — From 10/1982 to 10/1998

Aliases

Aliases are created when lenders tell us of other names you have been known by or when you tell us of other names you have used. Your credit report will include information recorded in these other names at the addresses you gave us when you applied for your report.

S1 MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE

Date of Birth DD/MM/CCYY
Also known as MS FORENAME MIDDLENAME OTHERSURNAME
Confirmed by EXPERIAN CREDIT REPORT (1) on 02/12/2005

S2 MRS FORENAME MIDDLENAME SURNAME, OTHER HOUSE NUMBER OTHER STREET, OTHERVILLAGE/TOWN, OTHERCOUNTY, OTHERPOSTCODE

Date of Birth DD/MM/CCYY
Also known as MS FORENAME MIDDLENAME OTHERSURNAME
Confirmed by EXPERIAN CREDIT REPORT (1) on 02/12/2005

This information was provided to us by you when you applied for your credit report via our website

Financial associations

Financial associations show details of anyone you are financially connected to. Financial connections are created by joint accounts, joint applications, joint court judgments or from information you have given to us. For further information please see our explanatory leaflet. When you apply for credit a lender may take into account financial information about people you are financially connected to.

No financial associations recorded

Public record information

No public data recorded

Credit account information

Credit account information shows details of your credit agreements with lenders. If you have any queries about this credit account information and would like to contact the lender yourself, there is a list of useful addresses at the end of your report. Please see the leaflet for an explanation of what all the details mean including an explanation of the status history.

C1 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**
Date of birth DD/MM/YY
The STORE CARD COMPANY CREDIT CARD/STORE CARD
Started 08/10/1986 Balance £150 Credit Limit £3,000
Status history 000000000000
In the last 7 months, the number of status 1-2 is 0; the number of status 3+ is 0
File updated for the period to 13/11/2005

C2 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**
Date of birth DD/MM/YY
THE CAR LEASING BANK LTD RENTAL
Started 269/04/2001 Balance : settled Settled on 30/04/2004
Status history 00000000000
In the last 36 months of account activity the number status 1-2 is 0 and the number of status 3+ is 0
File updated for the period to 02/05/2004

C3 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**
Date of birth DD/MM/YY
THE MOBILE PHONE COMPANY LTD COMMUNICATIONS
Started 31/05/1995 Balance £0
Status history 000000000000
In the last 12 months of account activity, the number of status 1-2 is 0 and the number of status 3+ is 0
File updated for the period to 13/12/2005

C4 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**

Date of birth DD/MM/YY
The OTHER STORE CARD COMPANY CREDIT CARD/STORE CARD
Started 14/030/2004 Balance £0 Credit Limit £1,500
Status history 000000000000
In the last 7 months, the number of status 1-2 is 0; the number of status 3+ is 0
File updated for the period to 30/10/2005

C5 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**
Date of birth DD/MM/YY
THE CAR LOAN COMPANY LTD HIRE PURCHASE/CONDITIONAL SALE
Started 30/05/2003 Balance Settled Settled on 29/05/2005
Repayment Period Monthly payment £135 over 24 months
Status history 000000000000
In the last 12 months of account activity, the number of status 1-2 is 0 and the number of status 3+ is 0
File updated for the period to 29/05/2005

Council of Mortgage Lenders (CML) information

Members of the Council of Mortgage Lenders record information on customers who have given up their homes or had them repossessed. If you have any queries about the CML information shown below and would like to contact the company concerned yourself there is a list of useful address at the end of your report. CML information may be recorded at up to three addresses - the address which was repossessed or surrendered and your previous and forwarding address(es).

No council of mortgage lender information recorded

Previous searches

Previous searches show the names of organisations that have seen some or all of the information recorded on your credit report within the past 12 months. Searches of your credit report should all have been made with your consent. Most will relate to credit applications you have made but some may be routine checks by your lenders on

accounts you already have. Unrecorded Enquiries, quotations, identity verification checks and credit report applications are shown for you on your copy of your report but are not seen by lenders.

P1 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**
Date of birth DD/MM/YY Time at address 04 years 03months
Searched on 16/11/2005
Searched by **EXPERIAN**
Application type CREDIT REPORT

Linked addresses

Linked addresses are created by lenders when you move or when you tell us your previous addresses. This information shows addresses that you have been connected with. For further information please see the explanatory leaflet.

B1 **MRS FORENAME SURNAME, HOUSE NAME AND NUMBER, STREET , VILLAGE/TOWN, COUNTY, POSTCODE**

Date of birth	DD/MM/YY
Linked to:	**OTHER HOUSE NUMBER, OTHER STREET, OTHERVILLAGE/TOWN, OTHERCOUNTY, OTHERPOSTCODE**
Source:	**THE STORE CARD COMPANY**
Date of information	04/11/2001

CIFAS - The UK's Fraud Prevention Service

CIFAS information is displayed by address and so the information may not be in your name. This information helps protect innocent people from becoming victims of fraud. An explanation of CIFAS can be found in the explanatory leaflet. Please remember that the rules of CIFAS mean that you will never automatically be declined credit because there is CIFAS information on your report. If you want to contact the CIFAS member for more information about the details recorded, please use the address we have given you as part of the CIFAS entry. If you feel that a CIFAS entry is incorrect in any way you can either contact the member directly using that address or let us know exactly what you feel is wrong and why and we will contact the member of your behalf.

Gone Away Information Network (GAIN)

GAIN shows that an individual owes money and has moved without giving the lender a forwarding address. It is explained more fully in the leaflet. If you have any queries about this information please contact the company which gave us the information.

Notice of Correction

Useful addresses

The following addresses will help you to contact lenders or other organisations if you want to ask them about information on your report.

This section shows addresses for all organisations past and present with information on the report

----- END OF REPORT-----

ANNEX E – LIST OF CONSULTEES

Within Government

- Small Business Service
- Office of Fair Trading
- HM Treasury
- Financial Services Authority
- Department for Constitutional Affairs
- Information Commissioner
- OFGEM
- OFWAT
- OFCOM

Public Consultation

- The Citizens Advice Bureau
- National Consumer Council
- Which?
- The Finance & Leasing Association
- British Bankers Association
- Consumer Credit Association
- Consumer Credit Trade Association
- Association for Payment Clearing Services
- Council of Mortgage Lenders
- Credit Services Association
- Experian
- Equifax
- CallCredit
- Justice
- Liberty
- Foundation for Information Policy Research
- Association of British Insurers
- National Association of Pension Funds

Consumer & Competition Policy Directorate
DTI

October 2006

Partial Regulatory Impact Assessment – Data sharing of non-consensual credit accounts

Contents

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Purpose and Intended effect

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- **Risk assessment**

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Consultation

TITLE OF PROPOSAL

1. Proposed removal of barriers to the sharing of non-consensual credit data

PURPOSE AND INTENDED EFFECT

Objective

2. Consumer debt levels in the UK have increased considerably over recent years, passing the £1 trillion mark in summer 2004. The majority of the population continue to benefit significantly from credit arrangements. However, a small but significant minority of the population is experiencing difficulty due to problem debt. The Government is committed to reducing the instances of those becoming over-indebted and providing help and support for those who do experience difficulties.

3. Lenders are encouraged, wherever practicable, to consider the full extent of a consumer's credit commitments when deciding whether or not to lend to that individual. This is usually achieved through the sharing of credit data via Credit Reference Agencies (CRAs). However, due to current restrictions on the sharing of pre 1996 (or non-consensual) accounts data contained in the Data Protection Act 1998, a proportion of data is not available to CRAs.

4. Any increase in the level of data available to CRA's should improve the ability of creditors to identify over-indebted individuals, and improve the ability of financial institutions to lend in a responsible manner. It is hoped that this would lead to fewer non-creditworthy individuals being offered inappropriate levels of credit.

5. One option for facilitating such data access is to lift restriction on the sharing of non-consensual account data (pre 1996 data) currently contained within the Data Protection Act. This could be done through a process of legislative reform.

6. This RIA considers the main issues, costs and benefits relating to this proposed legislative reform.

Background

7. Consumer credit provides individuals with flexibility in how they choose to access the marketplace and manage their finances. However, a small but significant minority of the population is experiencing difficulty due to problem debt. The Government is committed to reducing the instances of those becoming over-indebted and providing help and support for those who do experience difficulties.

8. In light of this the Government is keen to promote the sharing of all data relating to current credit commitments to facilitate responsible lending

within the credit market. Responsible lending is a key aspect of the government's consumer credit reform package; and central to this understanding is the sharing the information relating to the full extent of a consumer's credit commitments.

9. Information sharing relating to individuals credit histories enables credit reference agencies (CRA's) to produce credit reference scores for potential borrowers, which measure the statistical probability that credit will be satisfactorily repaid based primarily on previous repayment history. In the UK, credit data is shared via three credit reference agencies (CRAs), Callcredit, Equifax and Experian. These CRAs maintain databases, which hold information concerning personal credit performance. Some of the information is publicly available information (for example from the electoral roll or information about County Court Judgements), and some relates to specific credit products fed directly into the databases by credit providers. Credit reports produced by such agencies are then used to identify whether or not an individual is a good credit risk, whether their risk profile is appropriate for the product on offer, and whether an individual is potentially over-indebted.

10. All types of consumer credit are covered by the data sharing arrangements, including loans, credit cards, store cards, current accounts, hire purchase, mortgages, mail order accounts, and mobile telephone contracts[1].

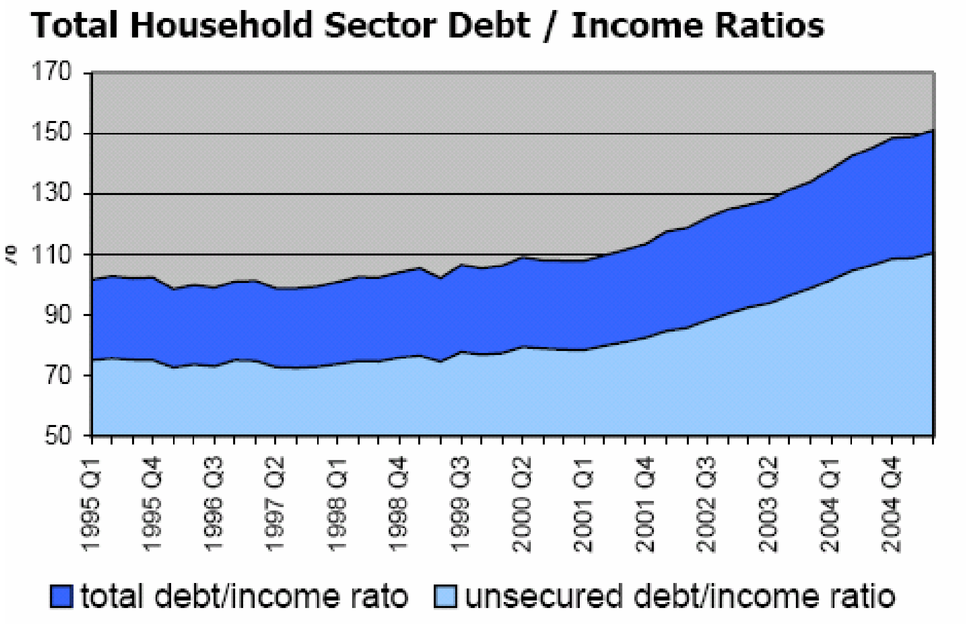
11. The current restrictions on non-consensual accounts data mean that lending decisions are currently made without the full knowledge of the applicant's credit history. One of the results of this missing data may be that credit is offered to individuals at a level that is inappropriate to their current situation. This may be in the form of too much credit being made available, and therefore encouraging over-indebtedness, or it may be in the form of too little credit being made available due to higher interest rates charged to cover bad debt provisions, limiting the potential of good candidates to access the appropriate level of credit at the market price.

Economic context

12. The UK credit industry is the largest within the EU, relatively competitive and very diverse in the credit products available to consumers. In recent years the credit market has been expanded rapidly with total consumer credit passing the £1 trillion mark in summer 2004. This growth has been the highest in Europe over the last decade, and has resulted in the debt/income ratio reaching its highest level on record, as seen in graph 1:

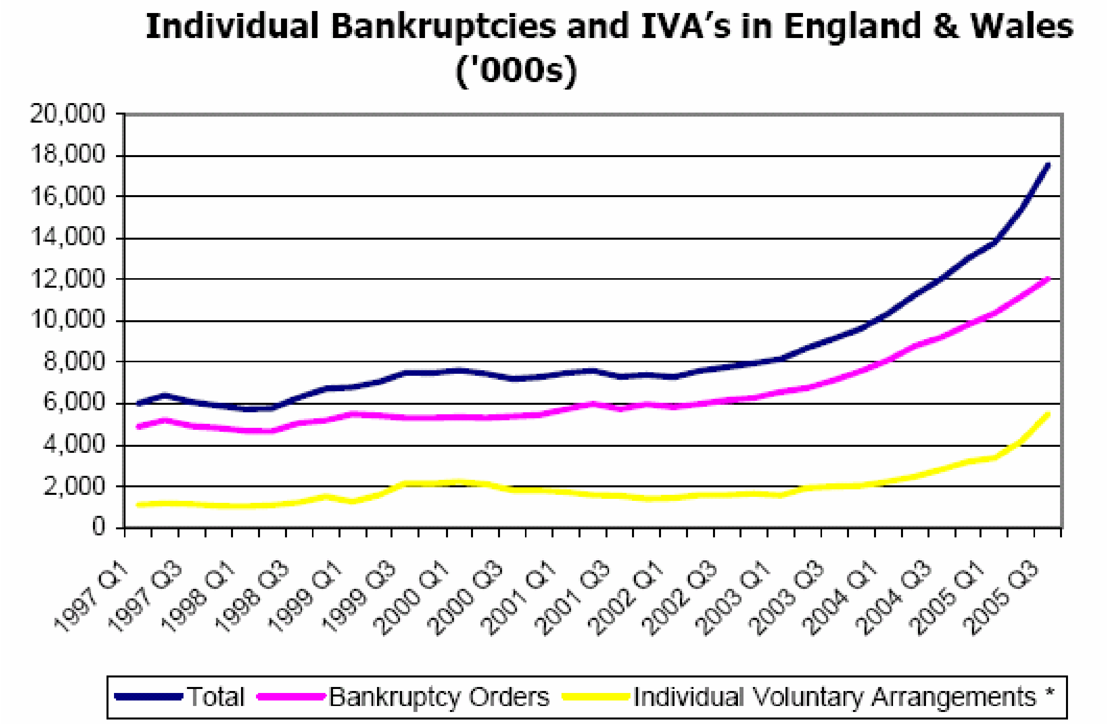
[1] Some exceptions apply, including data from small companies operating in sectors where it is difficult to extract customer profiles on a regular basis in a format suitable for sharing with other creditors, for example, where collections are on a weekly basis.

Graph 1:



13. Figures for overall debt write offs for individuals show a gradual increase over the past few years, as indicated in graph 2:

Graph 2:



Source: Insolvency service, DTI

*Includes deeds of arrangement

14. Furthermore, A number of large UK banks have recently declared an increase in their provisions for bad debt in 2005, whilst others have

indicated actual rises in bad debt provisions. Barclays Bank PLC, for example, has recently indicated that bad debt provisions rose by 20% in the first half of the year to £706m[2].

15. Evidence from a recent survey undertaken by MORI on behalf of the DTI[3], indicates that approximately 4% of the adult population are in arrears with regard to some commitments. More than 1% of individuals were found to be in debt on one or more credit agreements, with the average level of arrears being substantially higher than those relating to domestic bills.

Table 1:

Arrears on credit commitments/domestic bills

Type of Payment	% of sample currently in arrears on at least one credit commitment/ domestic bill	% of sample currently in arrears on at least one credit commitment/ domestic bill for more than 3 months	Average amount behind
Any payment	6%	4%	£868
Gas/Electricity	1%	1%	£181
Water	1%	1%	£325
Rent	2%	1%	£377
Council Tax	2%	1%	£338
Credit Cards	1%	1%	£1494
Personal Loan	1%	*	£1526

*Figure less than 1% and too small to be significant. This was the also case for arrears on Mortgage, Hire Purchase, Car finance and Other loan

16. In the UK, CRA's maintain databases, which hold information concerning personal credit performance. At present it is believed that there is coverage of up to 58% of consumer credit agreements on CRA databases.

17. The following types of information are currently shared or supplied via the CRAs' closed user groups to existing members:

- Customer details: current and previous names, current and previous (last three years') addresses, date of birth and, when the customer dies, a marker to indicate this fact.
- Financial links with other people, usually the spouse.
- Other names used such as maiden name.
- Previous and subsequent addresses.
- Credit account details such as date agreement started, period of agreement, amount borrowed/credit limit, current balance (updated monthly), payment history showing whether the customer pays on time each month, monthly repayment amounts (for loans only), date closed, date defaulted, and default amount. In addition, Callcredit shows previous balances and previous credit limits.
- There are also various flags to indicate, for example, whether the account is dormant, whether there is an arrangement, a dispute or a

[2] Barclays interim financial report released 6 August 2005
[3] Over-indebtedness in Britain: 2004(http://www.dti.gov.uk/files/file18550.pdf)

query, whether the debt has been sold on to another company, or the customer has moved house without supplying a forwarding address.
- The CML Possessions Register, which contains details of people who have had their properties repossessed. The aim of the register is to help detect borrowers who fraudulently do not disclose that their previous property was repossessed.

RISK ASSESSMENT

18. Initial consultation has identified minimal risks to this proposed policy, although some issues have been considered

19. The first of these relates to the ability of non-consensual data sharing to deliver substantial gains in the understanding of individual's over-indebtedness. Over-indebtedness is not uniquely related to consumer credit and the provision of such data may not be sufficient to create a significant impact on the ability of CRA's to assess the ability of individuals to repay debt. In December 2004, 1.2 million electricity and 1 million gas domestic customers were repaying debts to their supplier. Although the majority of debts were small, less than £100, recent gas and electricity price rises are likely to increase the number of vulnerable households in fuel poverty[4] and experiencing debt or disconnection. Under the proposed changes such information would still not be available to CRA's. It could be argued therefore that in the context of all consumer debt, this policy will have an insignificant impact.

20. However, in light of the benefits identified in paragraphs 37-46, it would seem likely that this option would offer at least incremental changes to the system and constitute part of ongoing attempts to improve data provision. As such any arguments suggesting that this proposal does not go far enough should not be considered as reasons for not undertaking this proposal.

21. Secondly, some consumers who would otherwise have received credit may be excluded for the prime credit market under new legislation. As a result these individuals may be forced to take out loans at far higher rates of interest from credit unions or other sub-prime credit providers. In a worse case scenario these individuals may be forced to borrow from illegal sources such as loan sharks, facing, at best, high rates of interest, and at worst violence and pressure to become involved in criminal activity.

22. However, the fact that more individuals are identified as uncreditworthy, and are subsequently excluded from borrowing, does not constitute a strong argument against non-consensual data sharing. Given that credit scoring provides a relatively consistent, accurate and fair form of credit assessment, then these individuals would be likely to struggle to repay credit if it were offered to them. Growing credit commitments, increasing arrears and eventual court actions would not help such individuals to alleviate their financial difficulties in the long run, and would be more likely

[4] Households that spend more than 10% of their income on heating are defined as fuel poor.

to compound existing repayment problems facing them. The Government's over-indebtedness strategy aims to address some of these broader issues[5].

23. Finally there is an issue regarding loss of privacy for some consumers, who may consider that they do not wish such personal information to be made available to lending organisations. However, having an option to opt out of information sharing would ensure that those consumers who felt strongly about this issue would have the option to keep such information private.

24. In light of these factors, non-consensual data sharing seems unlikely to have significant risks, and is likely to construe some benefit on consumers in the long run. Further costs are, however, discussed in the analysis below.

Options

Option 1 - do nothing, i.e. reject the proposal

25. As it stands information relating to a large proportion consumer credit accounts is already shared between financial institutions via CRA's, and it is possible that the additional information added by this proposal may not significantly impact on the ability of financial institutions to correctly assess the credit worthiness of a large number of potential borrowers. As such the government may consider leaving the situation unchanged

Option 2 – Encourage sharing of non-consensual accounts based on an opt-in principal under current data protection rules

26. Under current data protection rules financial institutions could share information relating to non-consensual accounts if they gained the expressed permission of account holders. With encouragement from the Government, financial institutions could overcome some of the barriers to non-consensual data sharing by requesting that customers provide permission for them to share private information relating to non-consensual accounts. This could be done in a number of ways including;
    - Mail shots,
    - Requests during day-to-day dealings in branch.
    - Requests at cash machines
    - Telephone requests

Option 3 – Enable sharing of non-consensual accounts based on an opt-out principal.

27. This option would involve legislative reform to enable financial institutions to circumvent existing data protection legislation, which prevents the sharing of non-consensual information regarding accounts and credit agreements. Various options exist for the way in which such data would be

[5] http://www.dti.gov.uk/files/file18559.pdf

shared. For example lenders could share all non-consensual accounts, subject to an opt out option. Alternatively they could only share the data when a consumer is already over-indebted, or lenders may only share data when a consumer applies for new credit.

28. This would be an enabling piece of legislation, and as such would not require mandatory compliance. If the industry does not consider the provision of such information to be beneficial then they may decline to provide the additional data set out in this proposal.

29. However, the policy will operate under the governing principals of reciprocity, under which subscribers will receive only the same credit performance level data that they contribute. Potential contributors are therefore urged to provide all such data that is readily available.

30. If financial institutions consider data provision to be beneficial relative to the costs incurred then all non-consensual account information would be made available under this option shared, subject to an opt out clause for consumers.

Option 4 – Enable sharing of non-consensual accounts without an expressed opt-out for consumers

31. This option would involve enabling legislation of the form outlined in option 3. However this option would not require an opt-out clause to be offered to consumers, in order to guarantee that all information is captured.

Sectors and Groups affected

32. The DTI expects the impact of these proposals to primarily affect those parties operating within the credit market. In particular, the activities of CRA’s, credit lenders and a small subset of potential borrowers will be affected by the proposed changes set out below.

Costs and Benefits

33. The costs and benefits set out in this section represent an initial assessment based on the information currently held by the Government. Should any further information come to light during further rounds of consultation then this will be considered fully within a full Regulatory Impact Assessment at the end of the consultation process.

Benefits:

Option 1: (Do nothing)

34. Paragraphs 65-68 identify a number of potential costs to introducing new information to the credit referencing system. One would expect these costs to be avoided should this option be selected, as the status quo will continue.

35. Furthermore, it is likely that, over time, the amount of information stored within pre-1996 accounts will be eroded by the natural closure of old, unused accounts. As such, in the long term this option may still ensure that relevant non-consensual data is made to CRA's. It should, however, be noted that this process is likely to take some time as levels of switching on some consumer credit products is fairly low. Recent research undertaken by the National Consumer Council indicates that only 7% of individuals switched their current account in a five-year sample period[6]. At this rate it would take some time for a substantial portion individuals to switch from non-consensual accounts, making their details available within current systems.

36. Finally, it should be considered that this option would remove the risk of individuals being excluded from the prime credit market. As discussed in paragraph 22, however, it is very debatable whether continuing to finance such individuals through credit that they are unable to repay would be beneficial in the long term.

Option 2:

37. The primary thrust of the proposals outlined above is to increase data provision to CRAs, in order to improve their awareness of the current financial commitments of individuals applying for credit products. This should ensure that more accurate financial assessments could be made, which would be expected to reduce lending to individuals already overstretched by existing credit commitments. In turn it is hoped that this would reduce levels of repayment default, lowering costs of bad debt for financial institutions and eventually filtering through to consumers in terms of lower prices. Consumers would also be expected to benefit from more consistent, accurate and fair credit assessment, which would reduce the likelihood that consumers could access credit that they could not repay and assist them in making responsible borrowing decisions.

38. Under current data protection legislation financial institutions could share information on non-consensual accounts if the expressed permission of account holders was given. As such, encouraging financial institutions to do so offers one option for facilitating increases in the information base upon which CRA's make assessments of credit worthiness.

39. Assessing the magnitude of the benefits from such data provision is difficult, but can be expected to be directly related to increases in the amount of information available to CRA's and the subsequent likelihood that such information would uncover additional over-indebted individuals, either prior to access to credit or during the repayment process.

40. Analysis conducted by Experian, on behalf of the British Bankers Association, examined the non-shared portion of the lending book of an

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[6] *Switched on to switching?; A survey of consumer behaviour and attitudes 2000-2005* (Alex Kozarkova on Behalf of the National Consumer Council)

existing member of the Experian Customer Indebtedness Index (CII) to establish the likely impact were non-consensual credit accounts to be come available on the shared database. The findings suggested that for every 1m extra credit accounts some 2,000 more consumers would be deemed to be over indebted using the Experian CII.

41. This analysis also estimates that upwards of 40m non-shared accounts would be shared under this proposal (approximately 10% of existing accounts), 33m of which were estimated to be current accounts whilst the rest were made up of credit based accounts.

42. Current account data may only be shared via the CRAs when an overdraft is past due. As such, only a subset of current accounts (those that are indebted) will be made available through this data-sharing proposal. For the purposes of this cost/benefit assessment it shall be assumed that the same proportion of current accounts are likely to be indebted as current accounts, estimated at 2000 per 1m by Experian.

43. It would therefore be expected that CRA's would be able to identify up to 80,000 more people as being over indebted, as a result of this measure.

44. Furthermore, the benefit from sharing would not stop with these customers, as this information would also improve the ability of lenders to identify those individuals on the cusp of over-indebtedness as well. It has been argued that an individuals credit or current account will provide the first indication that an individual is facing financial difficulty, as they will tend to use these resources to pay off outstanding utility and mortgage commitments.

45. Once identified, industry can assist these families by changing the nature of their credit to better suit their circumstances, declining additional credit, managing credit limits down as repayments are made, and referring them to additional help (for example, at CCCS or Money Advice Trust) for further support.

46. Information could also be used to validate the information provided to them by consumers. According to some sources up to 5% of applications for loans made by consumers to high street banks had undisclosed links to debts at previous addresses. Identifying the sort of consumer who may mislead the lender over the extent of their debt (deliberately or otherwise) would therefore help pick up some over-indebted consumers.

47. In the context of Option 2 it is, however, highly unlikely that the full scope of this benefit would be achieved. Information provided by industry to date has expressed some scepticism regarding their ability to gain the permission of individuals to share data. Response rates to requests for permission to provide information to other parties are likely to be very low, with few individuals willing to take the time or effort to respond. Mail shots have been known to have particularly low response rates, with some parties suggesting that as few as 1% of individuals would be expected to respond to this method of request. Waiting to ask customers during day to

day in-branch dealings, on the other hand, would create significant delays and would be unlikely to capture all customers due to reductions of in-branch dealings and the proliferation of on-line banking. Telephone requests may have greater response rates, as they require less effort on the part of customers but may be relatively expensive (as discussed in costs section). In addition, customers are often suspicious of data sharing and do not like their information to be shared. This is likely to be particularly true for those individuals whose non-consensual data may exclude them from getting credit in the future.

48. As such this policy is likely to fail to achieve information sharing for the majority of individuals, and particularly those likely to be identified as over-indebted. The benefit form this option is therefore likely to be limited, and fall far short of estimates made by Experian in the context of full data provision.

Option 3:

49. Paragraphs 37-46 set out the expected benefit of facilitating increases in information on customer's non-consensual accounts, and estimates of the number of additional over-indebted individuals likely to be captured as a result of increased data sharing

50. Option 3 offers an alternative way of achieving these benefits, through the use of legislative reform. However, in this case, it is more likely that the large majority of the 40m sharable accounts would potentially become available as a result of this direct Government action. This is due to two main factors.

51. Firstly, customers are considered far less likely to opt-out over such an issue than to opt-in (as required under option 2) due to the level of customer apathy surrounding such data issues, which generally have no discernable impact upon the majority of individuals. Far more customer data would therefore be available for sharing.

52. Secondly, industry has thus far indicated their support for such data sharing, acknowledging its beneficial impact and not highlighting any serious cost issues to providing and processing new data. As such it seems unlikely that a large number of financial institutions will choose not to share data under new legislative rules.

53. The result, according to Experian, will be up to 80,000 more people as being over indebted by CRA's, as well as secondary spillover effects for those individuals close to over-indebtedness. In the long run this may result in reductions in bad debt provision leading to falling costs and prices, as well as better consumer protection through responsible lending.

54. It should, however, be noted that a proportion of this benefit may be lost by the fact that people are able to opt out of the data sharing process. This may leave an opportunity for individuals who are concerned about their financial situation to continue to avoid detection. It is, at present, unclear

how significant an impact this will be, although it seems unlikely that a large proportion of consumers will opt-out.

55. Option 3, is likely to be perceived as a supportive and progressive Government intervention by industry, as it will substantially reduce the burden of facilitating data sharing for the private sector. As such it may assist in future attempts to promote such data sharing activity within the financial industry.

Option 4:

56. Option 3 (above) sets out the perceived benefits of taking this form of regulatory approach. According to Experian, up to 80,000 more individuals will be able to be identified as uncreditworthy as a result of this approach.

57. Option 4 extends this benefit by removing the ability of over-indebted individuals to continue to avoid detection via the use of the opt-out mechanism. It is unclear how much additional benefit this will create over Option 3, at present.

Question: Do you agree with benefits set out under each of the options? Are then any additional benefits that should be included? (Where possible please supply quantifiable estimates)

Costs

Option 1:

58. If this option were taken it would be unlikely that data sharing methodologies would alter from their current position. As such the benefits outlined in paragraphs 37-44 could be foregone if this option were taken.

59. Furthermore such a policy option would not be portray the Governments position on data sharing as supportive, and may hider future attempts to promote such activity within the financial industry.

60. In light of these factors the Government rejects option 1, based on current information.

Option 2:

61. As mentioned above, gaining the expressed permission of individuals can be difficult due to the level of apathy surrounding issues such as non-consensual data sharing among consumers. Requesting permission during day-to-day in-store operations is unlikely to capture the majority of individuals. Mail shots on the other hand are unlikely to get a significant response rate, and are expensive for industry. Discussions with stakeholders suggest that the costs of a mail shot are the price of a second-class stamp (21p) plus the cost of the letter (5p) per person. It is possible to negotiate down the costs of postage, but this would be offset by systems costs such as managing the database of recipients. Assuming

that letters would need to be sent to each of the 40m accounts identified by Experian's Analysis, then the total cost for industry can be estimated at £10.4m. Using telephone based data collection methods is likely to be even more expensive than this, due to the staffing costs of such an operation.

62. In light of the level of cost associated with gaining customer permission it would seem unlikely that Government would be able to do enough to encourage the industry to share a sufficient quantity of data under this option to make significant impact on the credit assessments of CRA's.

63. Furthermore there is no guarantee that such a methodology would provide access to data relating to those individuals most likely to be over-indebted, given that these individuals are likely to have the greatest to gain in the short term from concealing such information from lenders.

64. As such, Government rejects Option 2, based on current information.

Option 3:

65. Initial assessments undertaken by Experian suggest that up 10.3m new accounts will be made available to CRA's, should this option be taken.

66. Dealing with this quantity of information is likely to create two forms of cost for industry. The first and most significant of these is likely to be the initial cost of gathering, processing and storing this new information within current systems. The second is the ongoing cost associated with the storing and processing of greater amounts of information with CRA's internal systems. Some costs may also be created from dealing with individual customers requesting to opt-out from the data sharing scheme, however these costs would seem unlikely to be incurred in the majority of situations. Some indications have suggested that costs would be greater if lenders only shared data for over-indebted consumers, or for consumers applying for new credit. This is because a certain amount of case-by-case data processing and analysis would be required by financial institutions.

67. Given the relatively competitive nature of the UK financial market it can be assumed that any costs would eventually passed on to consumers, resulting in higher prices, and some level of consumer detriment.

68. However, early indications from industry have not suggested that these costs will be prohibitive, and general support has been shown for the proposal. Current systems are highly automated and as such adding even such a significant number of records is unlikely to add significant ongoing costs to the operations of CRA's. Furthermore significant amounts of data have been added to these systems before. This would suggest that such incremental data additions do not have a prohibitively high cost. Finally, large lenders are likely to already have the data in summarised form for their own decision-making systems. As such it is likely that the costs associated with gathering and processing will be limited. If costs did become sufficiently burdensome then industry could choose not to act on

legislative changes, as this is only an enabling measure. This fact in itself ensures that no excessive burden will be placed on industry.

69. There will also be legislative costs associated with this proposal, which will be borne by central Government. However, given the importance placed upon over-indebtedness issues in current policy, the Government does not consider these costs to be sufficiently burdensome to cause reason for concern.

70. In light of these factors the Government considers Option 3 to offer the best balance of costs and benefits, based on current information, and proposes to move forward on this basis.

Option 4:

71. Option 4 will involve all the costs as those set out in Option 3. However, any ongoing costs involved with dealing with opt-outs from customers will be avoided.

72. Further to this, the lack of any opt out option is likely to be unpopular from a consumer choice perspective. Consumer rights bodies may consider this to be an overly heavy handed approach, and it would seem reasonable that Government should, where possible, allow consumers the right of control over information originally enshrined within the Data Protection Act. Such civil liberties arguments should be given some weight within any decision, although it is difficult to estimate the size of this cost.

Question: Do you agree with costs set out under each of the options? Are then any additional costs, which should be included? Are costs likely to differ significantly if lenders only share data for over-indebted consumers, or for consumers applying for new credit, and why? (where possible please include quantifiable estimates)

Consultation with Small Business: The Small Firms Impact Test

73. The proposals set out within this regulatory impact assessment impact upon the data sharing activities of financial institutions operating in the prime credit market, and subsequently upon the compilation activities of CRA's. Lenders in the sub-prime market, such as credit unions, are excluded from the scope of the proposal, given the specialist nature of the products they offer.

74. In light of the fact that neither credit lenders or CRA's are likely to be classified as small enterprises it seems unlikely that the proposals outlined in this document will have a detrimental impact upon small firms.

Question: Do you consider that any of the proposals set out in this RIA are likely to have significant impact on small businesses?

Competition Assessment

75. The competition filter test has been carried out and the proposal was found to be unlikely to raise competition concerns. Given that the thrust of the proposal is to improve information provision within the financial services industry the proposal could be argued to be pro-competitive.

76. The UK consumer credit market is characterised by a large number of companies offering a wide range of products. Indeed the UK market is generally cited as the most developed in Europe, with no single firms having more than a 10% market share. We do not anticipate that the proposal will change the structure of the market since the proposals are unlikely to impact disproportionately on one part of the market.

Enforcement and Sanctions

77. The legislative proposals set out in this paper do does not require any changes to the existing arrangements where CRA's facilitate data sharing with no monitoring or enforcement from Central Government.

Compensatory Simplification Measures

78. In analysing the relevant options for this RIA we have considered the implications of the wider proposals on consumer credit regulation, including the Consumer Credit Bill, and the requirements these place on industry. In reaching a final decision on the detail of the chosen policy option we will ensure that costs to business are minimised as far as possible. This is the key reason for option 3 being preferred to option 2. As this Option represent a non-burdensome enabling measure compensatory simplification would not be required should this option be taken

Question: Are there any other ways that we can ensure that the final option we choose is designed and implemented in a way, which minimises costs to business.

SUMMARY OF COSTS AND BENEFITS

OPTION	COSTS	BENEFITS
1	Loss of benefits associated with action. May hinder future attempts to facilitate data sharing	Avoids any costs in implementing policy, and may achieve goals in very long run due to non-consensual account erosion
2	Likely to infer high cost on industry and may prove very difficult to gain access permission for the majority of customers. Unlikely that over-indebted individuals will grant access to data	Limited benefits due to the likelihood that few customers would allow data access. Some arguments surrounding privacy of information.
3	Some costs associated with adding data to systems. Some costs involved in legislative process.	Facilitates data access to all accounts, subject to opt-out. Limited burden on business. Estimates of approximately 90,000 over-indebted customers identified by new data, with secondary benefits for those on the cusp of over-indebtedness.
4	Some costs associated with adding data to systems. Some costs involved in legislative process. Some costs associated with consumer loss of control of personal information	Facilitates data access to all accounts, with benefits identified in Option 3.

Option 3 preferred subject to consultation, as this Option seems likely to capture most of the benefits available from data sharing, whilst still enabling individuals to have control over personal information.

Consultation

79. This document forms part of an ongoing process of consultation, which will include representations from the following bodies:

    Within Government

- Small Business Service
- Office of Fair Trading
- HM Treasury
- Financial Services Authority
- Department for Constitutional Affairs
- Information Commissioner
- OFGEM
- OFWAT
- OFCOM

    Public Consultation

- The Citizens Advice Bureau
- National Consumer Council
- Which?
- The Finance & Leasing Association
- British Bankers Association
- Consumer Credit Association
- Consumer Credit Trade Association
- Association for Payment Clearing Services
- Credit Services Association
- Experian
- Equifax
- CallCredit
- Justice
- Liberty
- Foundation for Information Policy Research
- Association of British Insurers
- National Association of Pension Funds

End

DTI
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